

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Temporary
Immediate Suspension of the Family
Child Care License of Stephanie Hahn

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge M. Kevin Snell on November 26, 2012, at the Wright County Human Services Building, 1004 Commercial Drive, Buffalo, Minnesota 55313. The OAH record closed on November 26, 2012, at the end of the hearing.

Karen Wolff, Assistant Wright County Attorney, appeared on behalf of Wright County Health and Human Services Agency (the County) and the Minnesota Department of Human Services (the Department). Jennifer D. Peterson, Esq., White & Associates, Elk River, Minnesota, appeared on behalf of Stephanie Hahn (Licensee).

STATEMENT OF THE ISSUE

Has the Department established that there is reasonable cause to believe that a failure by Licensee to comply with applicable law or rule, the actions of Licensee or other individuals, or conditions in the program, poses an imminent risk of harm to the health, safety or rights of children served by Licensee?

The Administrative Law Judge concludes that there is reasonable cause to believe that children in Licensee's care remain at imminent risk of harm.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Until October 24, 2012, when her license was temporarily suspended, Licensee operated a day care center in a residential home in St. Michael, Minnesota.¹ Beginning October 10, 2012, Ms. Hahn's C(3) license allows her to provide care for up to 14 children at any one time, provided she has a second qualified caregiver working with her.²

¹ Exhibit 7; Testimony of Stephanie Hahn and Rebecca Domjahn, County Social Worker and Licensors.

² Test. of S. Hahn and Kathy DeMars, Case Aide and licensors for Wright County Human Services Agency (the "County").

Licensee's Relevant Licensing History

2. Licensee has provided licensed family child care for 17 years – 13 years in the present location. Prior to October 10, 2012, Licensee operated under a class C(2) license, which permitted her to care for no more than 12 total children, with no more than 10 of those children under school age. Of the under school age children, no more than a combined total of two may be toddlers or one toddler and one infant.³

3. On October 10, 2012, the County advised Licensee that her mother, Gloria Schultz, was approved and qualified as a substitute caregiver. The County further advised Licensee that she and her mother could immediately start caring for up to 14 children under the provisions of a C(3) license.⁴

4. Licensee has had no major licensing sanctions in the 17 years she has been a family child care provider until the current temporary immediate suspension of her license.⁵

5. Licensee has three complaints, other than the one currently at issue, in her licensing history.

- On August 30, 2002, the County received a complaint regarding: Licensee exceeding licensed capacity by caring for four toddlers and four preschool age children; that a four-wheeler ATV was accessible to children in the yard; and that there was a trampoline that children utilized.
- On November 4, 2002, the County received a complaint regarding supervision.
- On July 8, 2008, the County received a complaint regarding: Licensee exceeding licensed capacity by caring for three infants, two toddlers and at least three preschool age children; and Licensee supervising preschool age children that are outside by watching them through a window.

In each of the three previous complaints, the County was unable to make a determination whether the alleged violations did or did not occur. In each case, Licensee denied the allegations.⁶

³ Test. K. DeMars; Ex. 1.

⁴ Test. of K. DeMars.

⁵ *Id.*; Test. of S. Hahn.

⁶ *Id.*; Exs. 8 and 9.

6. A County Licensur conducted two unannounced visits in the past. A 2009 drop-in visit resulted in a correction order not involving overcapacity. A 2011 drop-in visit went well, with no correction orders issued.⁷

7. During the relicensing process for Licensee in the fall of 2012, after the County requested that Licensee complete an Enrollment Form that lists “all children you have cared for over the past 12 months, whether they are still in care or not and whether they are full or part time.” Licensee completed an Enrollment Form listing 11 children. The County received the form on August 30, 2012. The form listed one infant, one toddler, six preschoolers, and three school age children.⁸

8. One purpose of such Enrollment Forms is to send parent evaluations to the parents of day care children to be completed by the parents and returned to the County.⁹

9. The August 30, 2012 Enrollment Form that Licensee completed was intentionally inaccurate. It did not contain all of the children that Licensee had cared for in the previous 12 months because:

- listing all of the children might initiate questions regarding capacity, as had happened to a friend of Licensee who is also a licensed day care provider;
- school age children were not in care during the previous summer;
- the father of three children was going to be laid off from work after the end of the 2012 construction season.¹⁰

10. During a September 2012 relicensing visit, a County Licensur issued Licensee a Correction Order for the following violations, among others: razors in a drawer accessible by children; an inoperable exit door; items located too close to the furnace; and non-use of baby monitors. The foregoing items were still not corrected as of October 23, 2012.¹¹

Licensee’s General Program Conditions

11. Licensee’s child care program is organized and highly structured with consistent routines. The children are always well behaved and follow Licensee’s rules and instruction without objection. Licensee is attentive to the children in her care and they are cared for well.¹²

⁷ Test. of Terri Aarvig, County Case Aide.

⁸ Ex. 3; Test of S. Hahn and K. DeMars.

⁹ Ex. 3.

¹⁰ Test. of S. Hahn.

¹¹ Test. of T. Aarvig.

¹² Test. of S. Hahn, Tricia Anderson, Jamie Kenton, Jill Kenton, Kristy Laufenberg, Sonya Lundeen, and Vicki Spsychalla.

12. The home where Licensee provides family child care is a large, 4,000 square foot, split-level home. The entire home is licensed to provide licensed child care. The front door is not used during day care hours. Access to the home is from an upper level door that opens to the main day care area.¹³

13. Licensee and her mother each supervise children on different levels of the home when children are on both levels.¹⁴

14. The main day care area, adjacent to the kitchen, is large and contains many organized bins for toys and materials for activities, as well as a large round table.¹⁵ That area is also adjacent to the dining room, the door to which contains a gate to prevent access by toddlers and infants.¹⁶

15. The upper level living room contains large couches, chairs and a television. It is also the area where the boys play with trains.¹⁷ School age girls utilize Licensee's master bedroom, on the upper level, when they play dolls.¹⁸

The lower level of the home contains a large activity room where children play Ping-Pong, X-Box, and other activities.¹⁹ Three bedrooms on the lower level are utilized for naps for the infant, toddlers²⁰ and preschoolers.²¹

Complaint and Unannounced Visit Related to Licensed Capacity Violation

16. On October 22, 2012, the County received a complaint that Licensee was operating her day care in excess of licensed capacity on Tuesdays and Thursdays, caring for approximately 19 children.²²

17. On October 23, 2012, two County Licensors made an unannounced visit to Licensee's home. After entering the home, the Licensors found, verified in writing by Licensee, that Licensee and her mother were caring for 21 children:

- One infant;
- Two toddlers;
- Nine preschoolers;

¹³ Test. of S. Hahn and T. Aarvig; Exs. 10-18.

¹⁴ Test. of S. Hahn and G. Schultz.

¹⁵ Ex. 10

¹⁶ Id.; Ex. 15.

¹⁷ Ex. 12; Test. of S. Hahn.

¹⁸ Ex. 16; Test. of S. Hahn.

¹⁹ Ex. 17; Test. of S. Hahn.

²⁰ Ex. 18; Test. of S. Hahn.

²¹ Exs. 11, 13, and 18; Test. of S. Hahn.

²² Ex. 4; Test. of Lisa Gertken.

- Nine school age children.²³

Of those 21 children, 13 of them were not listed on Licensee's Enrollment Form.²⁴

18. Licensee may have been routinely caring for 20 children on Tuesdays and 22 children on Thursdays.²⁵

19. When the Licensors arrived at approximately 3:00 p.m., Ms. Schultz was caring for 10 children in the upper level room used as the primary day care area. Licensee was in the lower level of the home to supervise the younger children that were napping, one of whom was waking up, together with school ages boys playing in the activity room. Some preschool children were playing in the upper level living room. Four school age children were playing "dolls" in a bedroom on the upper level.²⁶ Licensee's day care program was well organized, with plenty of room and toys for the children. The situation was calm, not chaotic.²⁷

20. Ms. Schultz deferred questions from one Licensors, referring her to Licensee, who was bringing up the infant that had just woken up. Ms. Schultz then went to the lower level to supervise and wake up the napping children on that level as the Licensors interviewed Licensee.²⁸

21. When asked by the Licensors why she had so many children in care, Licensee replied that: most parents are single mothers or from broken homes; she wants to help families that are struggling because other after-school programs for school age children are more expensive; and she runs a safe and reliable day care.²⁹

22. Licensee's C(2) license certificate was still posted, because the C(3) certificate could not be expected to be received from the Department for several weeks.³⁰ The investigating Licensors, unfamiliar with Licensee, her program, and the fact that Licensee's license had been recently changed from a C(2) to a C(3), was highly agitated throughout the visit as she inspected all of the home, exhibiting an observable lack of tact.³¹

23. At the conclusion of the visit on the 23rd, the inspecting Licensors advised Licensee that she would have to be within her capacity limits by the next morning.³² Licensee reviewed her enrollment, chose the children that would be let go, and called

²³ Ex. 5; Test. of L. Gertken, S. Hahn and T. Aarvig.

²⁴ Compare, Ex. 3 to Ex. 5.

²⁵ Ex. 6; Test. of L. Gertken and S. Hahn.

²⁶ Test. of G. Schultz, L. Gertken, T. Aarvig and S. Hahn.

²⁷ Test. of T. Aarvig.

²⁸ *Id.*; Test. of G. Schultz, L. Gertken and S. Hahn.

²⁹ Test. of S. Hahn.

³⁰ Test. of K. DeMars.

³¹ *Id.*; Test. of G. Schultz.

³² Test. of L. Gertken and S. Hahn.

the parents that evening to inform them that they could not return their children to her care.³³

24. When the Order of Temporary Immediate Suspension (“TIS”) was personally delivered to Licensee on October 24, 2012, Licensee informed the Licensors that caring for 21 children was not outside her personal limits to care for because she has six children of her own and knows how many children she can care for safely.³⁴

Parent Confidence in Licensee’s Program Conditions and the Safety of Their Children in Licensee’s Care

25. Licensee has the confidence and unconditional support of six current day care parents, representing six children. They universally believe that Licensee is a kind, loving, caring, organized and exceptionally skilled family child care provider. These parents, now knowing that Licensee was over capacity on October 23, 2012, have no concerns for the safety of children while in Licensee’s care. The children are happy when in Licensee’s care and are anxious to return. These parents are anxious to return their children to Licensee’s care. However, these parents:

- usually only see a few other children when they drop off or pick up their child[ren];
- have not paid attention to the number of children in licensee care;
- do not know what the regulations on capacity limits specify.³⁵

Procedural Findings

26. On October 23, 2012, the County recommended to the Department that it issue an Order of Temporary Immediate Suspension (“TIS”) of Licensee’s license.³⁶

27. On October 24, 2012, the Department issued Licensee a TIS that was personally served on Licensee that day.³⁷

28. Following a timely appeal of the TIS by Licensee, on November 7, 2012, the Department issued a Notice of and Order for Hearing, scheduling a contested case hearing for November 26, 2012.³⁸

Based on these Findings of Fact, the Administrative Law Judge makes the following:

³³ Test. of S. Han.

³⁴ Test. of R. Domjahn.

³⁵ Test. of T. Anderson, Jamie Kenton, Jill Kenton, K. Laufenberg, S. Lundeen, and V. Spychalla.

³⁶ Test. of L. Gertken.

³⁷ Ex. 7; Test. of R. Domjahn.

³⁸ Notice and Order for Hearing.

CONCLUSIONS

Jurisdiction

1. The Administrative Law Judge and the Commissioner of Human Services have authority to consider and rule on the issues in this contested case proceeding pursuant to Minn. Stat. §§ 14.50 and 245A.08.

2. The Department gave proper and timely notice of the hearing and has fulfilled all procedural requirements of law and rule.

3. The purpose of family child care licensure statutes and rules is to ensure that minimum levels of care and service are given and to protect the care, health and safety of children.³⁹

Temporary Immediate Suspension Standards and Reasonable Cause

4. Minn. Stat. § 245A.07, subd. 2. provides, in applicable part:

If the license holder's actions . . . or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program, the commissioner shall act immediately to temporarily suspend the license.

5. In order to maintain a temporary immediate suspension under Minn. Stat. § 245A.07, subd. 2, the Department must show that reasonable cause exists to believe that Licensee's failure to comply with applicable law or rule or the actions of other individuals, poses a current imminent risk of harm to the health, safety, or rights of persons served by her.

6. "Reasonable cause" for the purpose of a temporary immediate suspension means:

there exist specific articulable facts or circumstances which provide the commissioner with a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of persons served by the program.⁴⁰

Family Child Care Law and Rules Alleged to Have Been Violated

7. Minn. R. 9502.0365 regarding licensed capacity, child/adult ratios and age distribution restrictions provides in relevant part:

Subpart 1. **Capacity limits.** Family day care and group family day care providers shall comply with part 9502.0367, which limits the total number of children and the number of preschoolers, toddlers, and infants

³⁹ Minn. Stat. § 245A.07, subd. 1; Minn. R. 9502.0325.

⁴⁰ *Id.*

who may be in care at any one time, and provides for the number of adults who are required to be present.

A. Providers shall be licensed for the total number of children, ten years of age or younger, who are present in the residence at any one time. The licensed capacity must include all children of any caregiver when the children are present in the residence.

B. Within the licensed capacity, the age distribution restrictions specify the maximum number of children under school age, infants, and toddlers who are in care at any one time.

8. Minn. R. 9502.0367 regarding child/adult ratios and age distribution restrictions provides that a C(3) Group Family Day Care license permits one adult to have 14 total children, only 10 of whom may be under school age. Of the total children under school age, a combined total of no more than four shall be infants and toddlers. Of the total infants and toddlers, no more than three may be infants.

Violation Found to Have Occurred

9. Licensee was over capacity by seven children on October 23, 2012, and therefore in violation of Minn. R. 9502.0365 and Minn. R. 9502.0367 during that time.

10. There are sufficient articulable facts or circumstances that would provide a reasonable, prudent person with a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of children served by Licensee.

11. The Department has therefore demonstrated reasonable cause to believe that there is a risk of imminent harm to the health or safety of children served by the Licensee.

12. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

13. The bases and reasons for these Conclusions are those expressed in the Memorandum that follows, and the Administrative Law Judge incorporates that Memorandum into these Conclusions.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge recommends that: the Order of Temporary Immediate Suspension suspending the family child care license of Licensee be AFFIRMED.

Dated: December 10, 2012

s/M. Kevin Snell

M. KEVIN SNELL
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services (the Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Lucinda Jesson, Commissioner of Human Services, P.O. Box 64998, St. Paul MN 55155, (651) 431-2907 to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

Burden of Proof

At this stage, the County, on behalf of the Department, must demonstrate the existence of circumstances sufficient to warrant a cautious person to reasonably

suspect that the Licensee poses an imminent risk of harm to the health, safety or rights of persons in the Licensee's care. This is a modest standard, intended to insure that vulnerable children are protected until there can be a full hearing and final determination on the underlying circumstances.

Permitted Evidence

During an expedited hearing regarding a temporary immediate suspension, the Department must present reliable oral testimony and/or reliable documentary evidence in support of a finding of reasonable cause. The Department and the Administrative Law Judge are entitled to rely on reliable hearsay evidence linking the license holder to an act that puts children at risk of imminent harm. The Department relied principally on the testimony of four County Licensors, together with hearsay evidence contained in County reports. At this stage of the process, the Administrative Law Judge's task is to determine whether there is enough reliable evidence to maintain the suspension.

Necessity of "Imminent Risk of Harm"

Licensee argues that there is no imminent risk of harm because: most of the children over licensed capacity were school age children and require less supervision and less care; and no children were harmed. In TIS matters, whether children were harmed is irrelevant, except to aggravate a situation. The issue here is "risk" of harm. Actual physical or emotional harm is not required in TIS situations.

The Department argues that the large number of children in excess of licensed capacity alone indicates a continuing imminent risk of harm. Such a conclusion has merit under the circumstances of this particular case. In addition, there is reliable evidence that this overcapacity situation was deliberate, not a one-time occurrence, and greater than short term duration. This chronicity aggravates already serious violations. As detailed below, there are sufficient articulable facts to warrant a cautious person to reasonably suspect that Licensee and the conditions of the day care home present a current risk of imminent harm to children in her care.

Analysis of the Undisputed Facts in Evidence

First, there is evidence in the record that Licensee has been over capacity continuously since the beginning of the academic year in September 2012. Licensee explained that this overcapacity was for two reasons. First, Licensee testified that she is an exceptional day care provider and knows her limits. Second, Licensee testified that she is committed to helping out parents of limited means by caring for their school age children. Neither of these reasons, even if completely true, excuse the knowing and deliberate violations of the capacity limitations. The Department determined, by issuing the capacity regulations, that caring for more children than provided in the regulations placed all children in care at a risk of harm as a matter of law.

Second, Licensee did not articulate any assurances that she will follow the requirements of the capacity limits in the future. This single factor was given the most

weight by the ALJ in determining that there remains a suspicion that Licensee will intentionally go over her licensed capacity in the future.

Third, Licensee was unapologetic about being overcapacity, relying on the fact that she has a well-structured program that allows her to be able to care for more children than the law allows, particularly when combined with her exceptional skills.

Opinions of Day Care Parents

The testimony of several day care parents, all of whom have reasonable knowledge about Licensee and the day care she provides, describe Licensee in terms that would support Licensee's own view that she is an exceptional day care provider. The fact that these parents believe Licensee provides a safe and structured environment for their children militates against a conclusion that a reasonable person could suspect that Licensee presents a risk of harm to children. The Minnesota Court of Appeals has determined that such evidence is relevant and desirable in TIS cases.⁴¹ However, the parents that testified either lacked knowledge of the scope of Licensee's overcapacity violations or did not even know of instances of overcapacity because they either did not ever count the number of children in care or only saw limited numbers of children either at the beginning or the end of the day as they either dropped off or picked up their children.

Conclusion

The reliable evidence in the record regarding the situations on October 23, 2012, and now, including Licensee's lack of commitment to always remain at or below her licensed capacity, combine to rise to the level where the Administrative Law Judge is convinced that there remains an imminent risk of harm to the health, safety, or rights of the children served by her. The evidence in the record suggests that the purpose of family child care licensure statutes and rules (to ensure that minimum levels of care and service are given and to protect the health and safety of children)⁴² may not be being served by Licensee in the material area of capacity.

Licensee awaits the imposition of an appropriate sanction for her deliberate violations of the rules on licensed capacity. The ALJ finds that a suspicion of an imminent risk of harm is present and respectfully suggests to the Commissioner that the TIS be continued until the Commissioner is satisfied that Licensee is unqualifiedly committed to abiding by licensed capacity limits.

M. K. S.

⁴¹ *In Re Strecker*, 777 N.W.2d 41, 46 (Minn. App. 2010).

⁴² Conclusion 3.